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THE KANSAS COURT OF INDUSTRIAL RELATIONS WITH ITS BACKGROUND[1]

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If any evidence were needed to prove the social importance and legal significance of the recent establishment by the state of Kansas of a Court of Industrial Relations, it would be abundantly supplied by the flood of comment let loose by the decision of the United States Supreme Court in the Duplex Printing Press Co. Case.[2] The disappointment of those sympathizing with the purposes and methods of the labor unions, registered by the bitter denunciations of the labor leaders and the more restrained expression by the intellectuals of sorrow and pity for the ignorant blunders of the court, and the unconcealed jubilation of those whose sympathies are with the employing class, merely make manifest the intense feeling that underlies the labor problem. This inflamed state of the public mind is not less a significant symptom of a diseased condition of the body politic than is an inflamed organ evidence of bodily disease. It inevitably makes any operation undertaken both more painful and more dangerous.

The enactment of the bold Kansas legislation would scarcely have been possible in any other state. The fact that Kansas has a peculiarly high percentage of native born population of English origin, and a relatively small industrial population, enabled the people of that state to make a courageous response to the clear call of an acute emergency. The dramatic chain of events leading up to the enactment will be readily recalled; how with a callous brutality almost incredible, the coal miners' union, knowing of the dangerous shortage in the fuel supply, tied up the entire coal industry of the state, with the deliberate intent of inflicting such suffering upon the innocent and supposedly helpless people that the coal operators would be compelled to yield to the union's demands. With an arrogance not unlike that of a feudal baron, the leaders of the union announced that not a ton of coal should move in Kansas until they gave the word; and when told that the patients in a local hospital were in danger of freezing for lack of fuel, they are said to have replied, "Let them freeze." We shall hope that this report is incorrect.[3] The current newspapers told of Governor

[1] This paper includes parts of an address made before the Connecticut State Bar Association on January 10, 1921.

[2] (1921, U. S.) 41 Sup. Ct. 172.

[3] Criticism of the conduct of employees in particular labor disputes does not carry an implication that the employers in the same disputes were blameless. It is foolish to assume that employers concerned in these controversies were wiser, less selfish, or more regardful of the rights of the public than the

Allen's courage and energy in meeting the crisis, the taking over of the mines by the state, the failure to secure any co-operation from the striking miners, and finally the wonderful response to the call for volunteer workers in the mines, who came by the thousands, and with their unskilled efforts saved the people of Kansas from impending disaster.

The special session of the legislature called to meet in January, 1920, had fresh in mind not only the recent startling events in Kansas but also the circumstances attending the passage, in 1916, of the Adamson Act while the labor leaders "held their stop-watches on Congress," to use the language of the Governor's message. The bill for a court of industrial relations, prepared by the chairman of the public utilities commission, was vigorously and unanimously opposed by the representatives of employers and employees alike, but was nevertheless passed by overwhelming majorities in both houses, and became a law on January 24, 1920.

When viewed historically in the large, this act is seen to be a bold and interesting attempt to take away from the parties to labor disputes the privilege of trial by battle long since denied in all other cases. In the heat of a doubtful battle neither antagonist welcomes interference with the contest. We are not surprised, therefore, that the parties to the industrial warfare that in this country is always flagrant or imminent, should almost without exception resent the Kansas act. If it is a wise extension of the rule of law in place of the chaos of violence, it will prove highly beneficial to the contestants as well as the public, but it is unreasonable to expect them, blinded with the passion of conflict and dazed from blows, to perceive that fact. Neither will lawyers, themselves often engaged in that part of the great struggle which takes place in the courts, be able to appraise the real meaning and value of the Kansas movement unless it is made to appear in its proper perspective. The primary purpose of this article is to attempt to supply the needed background.

It is scarcely necessary here to support by argument or authority the statement that history clearly teaches that our civilization rests upon the substitution of the orderly and peaceable processes of law for the uncertain and violent methods of self-help. No social progress is possible unless the individual is protected, while engaged in proper labor, from personal violence, and also protected in the enjoyment of the fruits of such labor. If the individual must rely upon his own strength and cunning to protect himself while working, and to preserve the products of his toil, his strength and mental abilities will be so largely occupied in struggle, through violence and intrigue, with his neighbors that there will be no opportunity for the production of wealth

employees. Probably they were not. If evidence on this point is needed, it is abundantly provided by the investigation recently conducted in New York by the Housing Committee.

and the development of those arts that go to make up what we call civilization. It is a truism that civilization depends upon the reign of law. Therefore any man or association of men which refuses to acknowledge the reign of law, impedes the development of civilization and is an enemy to society. The person who violates a rule of law prescribed as essential to the welfare of society is termed a criminal, while the bolder man who deliberately refuses obedience to the commands of the law receives the opprobrious title of outlaw.

It is interesting to note that the progress of law, especially as illustrated in the history of English law, has been from the savage state of self-help and private vengeance, through self-help by personal combat in the presence of a court, and subject to such regulations as will localize the conflict and assure some measure of fairness in its conduct, to the state where wrongs are to be righted or prevented solely by the orderly application of the methods ordained by the organized community. These methods take effect, when the wrong is in violation of law, in the application of the power of society against the wrongdoer pursuant to the determination of a court of justice, or, in the case of oppression under the law, in setting in motion the social machinery by which the oppressive law may be repealed or amended by the legislative body assembled to give orderly effect to the will of the majority of the people. In this last stage of social development organized society alone may use force, and, with the exception of those few instances in which the individual is still privileged to use self-help, as in self-defense, for example, private vengeance, even by one grievously wronged against an obvious wrong-doer, is a crime.

In the English law, at least, the germ of this progressive development it to be found in the King's peace.[4] In very early times, even before the Norman Conquest, it was recognized that upon the King's highway, and probably in other places, there dwelt the King's peace. The man guilty of violence upon the King's highway was guilty of a breach of the King's peace. He was not only answerable in the blood feud and in the local courts to the victim of his assault or to the deceased victim's kinsmen; he must also answer to the King in the King's court for the wrong that was done to the King. When brought before a proper court on the appeal of the person injured, he could demand trial by battle, but not so when summoned to answer for the wrong done to the King. The wording of the thirteenth century "appeal" was that the act charged had been done "wickedly and in "felony against the peace of our Lord the King,"[5] a phrase that has its modern echo in the conclusion of our present day indictments

[4] Bracton, folio 142, b; 1 Pollock & Maitland, *History of English Law* (2d ed. 1899) 44. See also the excellent article on *The King's Peace in the Middle Ages* by Sir Frederick Pollock (1899) 13 HARV. L. REV. 177-189.

[5] *"Quod nequiter et in felonia contra pacem domini regis:"* Bracton, folio 142 b.

"contrary to the peace and dignity of the Commonwealth." On the King's appeal the accused must needs throw himself upon the country and abide the verdict of a jury, for "the king fights not, nor has none "other champion than the country." Slowly the king's peace flowed over the whole law, and with the coming of the fourteenth century every wrongful act of violence became a breach of the King's peace, for which the King must be satisfied; and the King's justice was expanded to include other wrongs, even though of such nature as not to give rise to the Anglo-Saxon blood feud, such as theft. The growth of the King's peace and of the King's justice was not merely in response to the naturally existing royal desire to assert and maintain supremacy over the individual subject; it was also in recognition of duty owed by the King to the people, for whom he held his powers in as yet unconscious trust. This concept is strikingly exhibited in a proclamation issued by the King's Council in 1272, declaring the King's peace to prevail in spite of the fact that Henry III was dead and his peace dead with him, and his successor, Edward I, not yet crowned, because absent on a crusade. "For rendering and keeping the peace," read the proclamation, "we are now and henceforth *debtors* to all and "sundry folk of this realm."[6] The King, as head of the state, owes justice to every member of the state severally and to all members collectively. The public welfare becomes a very definite objective. The subject has the right to look to the King to protect him, not only from those who would do violence to his person, but also from those that would commit other wrongs against him; and in the righting of all such wrongs as were considered crimes, the public at large, through its representative the King, had a vital interest which the wronged individual could not waive or compound.

But the King did not find the discharge of his duty to maintain peace and do justice an easy one. The "great men" of the realm persistently stood in his way. The great nobles resented the encroachments of the royal power, which, it must be remembered, was always acting, however unconsciously and however perversely at times, in the interest of the public. The King's powerful subjects chafed under the restrictions placed upon their freedom of action. Many of these great barons were possessed of huge estates. Having his seat in a great fortified castle, filled with armed retainers and many officers of civil administration, and maintaining his own manorial courts, the great English nobleman ruled his domain with authority but little less than the King's and in some instances lived in greater splendor.[7]

[6] ". . . *qui in exhibitione justitiae et pacis conservatione omnibus et singulis de ipso regno sumus ex nunc debitores.*" Stubbs, *Select Charters* (9th ed. 1913) 448. Prior to this time the King's peace was regarded as suspended during the interval between the death of the King and the coronation of his successor. Pollock, *op. cit.*, 13 HARV. L. REV. 184.

[7] For a vivid description of the mediaeval English baronial establishment, see 3 Stubbs, *Constitutional History* (5th ed. 1896) 557.

It can easily be understood how bitterly these great nobles resented any interference of the King in their own quarrels and with what contempt they regarded the processes of the King's courts. No doubt the powerful men of that day were like those of our own time in being sure that they knew far more of the right of the matter than did the officers of the government, and in regarding the judges as ignorant and the administration of justice in the courts as unbusiness-like and inadequate. With their bands of armed retainers, in disregard of the law and utter contempt for its processes, they seized land claimed by them or their friends, forcibly carried away cattle or other personalty, and inflicted death or bodily violence upon all who opposed their will. Such high-handed violation of the King's peace and the King's justice was called maintenance *in pais* (*manutenentia ruralis*). If the great nobleman or one of his retainers were sued in the King's court, or if he were plaintiff there, the shining armor and clanging weapons of the baronial retinue were usually sufficient to overawe judges and jury and secure a judgment favorable to the litigant supported or maintained by the show of armed force. Such maintenance in litigation was known as *manutenentia curialis,* or maintenance in court. Maintenance, coupled with champerty, which was an agreement on the part of the litigant to share the proceeds of the litigation, often unrighteous, with the maintainer, and frequently attended with gross corruption of court, jury, sheriff, and other high officers of the crown, was for several centuries the greatest single impediment to the development of English law and the progress of the English State. Its power for evil varied inversely with the strength of the executive power. Thus during the reign of such weak monarchs as Richard II and Henry VI, the evil became intolerable, while under the strong Tudor sovereigns it was checked and eventually abolished.

In connection with the practice of the great men of the realm in thwarting, obstructing, and corrupting the administration of justice, there arose the interesting custom known as livery. The term is derived from the Latin *liberatio,* which originally was applied to the delivery of food and clothing by the great houses to their retainers and servants. Later it was confined to supplies of wearing apparel, which might consist of an entire suit or uniform, or of a hat, cockade, or collar, worn as a symbol that the wearer was a retainer of a great house and had its support in litigation in which he appeared.[8] Ultimately the word livery came to mean the distinguishing costume so worn. It became customary for the great baron of the fourteenth century to keep among his retainers a "maintainer" whose appearance in court with the collar or other symbol of his house in support of a litigant accomplished all the purposes of an armed band, and at the same time with less expense and more decorum.[9] It is probable that this unworthy

[8] 3 Stubbs, *op. cit.* at p. 549.

[9] Winfield, *History of Maintenance* (1919) 35 LAW. QUAR. REV. 69.

practice is commemorated in our own time when in political parlance one man is said to wear another man's collar.

Coke was of opinion that maintenance was a crime at common law,[10] but he was probably wrong.[11] It is certain that in combating the obstruction of justice by powerful men and groups of men by maintenance, the English Parliament found it necessary to pass statute after statute, beginning as early as 1275[12] and continuing at frequent intervals almost to the time of Elizabeth. The prevalence and the serious nature of this evil practice is clearly established when we note that one of the causes for which the Parliament of Richard II was summoned was the repression of maintenance, and that it afforded one of the grievances inciting Wat Tyler's rebellion in 1381.[13] It was only after the Wars of the Roses had weakened or destroyed the great baronial houses that the strong Tudor sovereigns were able to bring the survivors under the law and abate the evil of maintenance. In our own time it has lost all its romance and feudal trappings and appears only as the inglorious offense of a few peculiarly obnoxious members of the legal profession.

The injury to the public by the unwillingness of powerful men and associations in mediaeval England to submit to the law is vividly shown in the recitals found in the various statutes prohibiting maintenance and liveries. Thus in 1 Edw. III St. 2, c. 14 (1326) we read:[14]

"Because the King desireth that Common Right be administered to all persons, as well poor as rich, he commandeth and defendeth that none of his councillors, nor of his house, nor none other of his ministers, nor no great man of the Realm by himself nor by other, by sending of letters, nor otherwise, nor none other in this land, great nor small, shall take upon them to maintain quarrels, nor parties in the country, to the let and disturbance of the Common Law."

The methods of the maintainer are graphically described in the preamble of the statute 4 Edw. III. c. 11 (1329) aimed at the same evil, passed scarcely four years later:

"Whereas in times past divers people of the Realm, as well great men as other, have made alliances, confederacies and conspiracies, to maintain Parties, Pleas, and Quarrels, whereby divers have been wrongfully disinherited; and some ransomed and destroyed; and some for fear to be maimed and beaten durst not sue for their right, nor the Jurors of Inquests give their verdicts, to the great hurt of the people and (slander) of the law and Common Right."[15]

[10] 2 Inst. 212. [11] Winfield, *op. cit.*, 56. [12] St. 3 Edw. I. c. 25.
[13] Winfield, *op. cit.*, 69. [14] 1 Stats. of the Realm, 256.
[15] In one of the Paston letters, written about the year 1440, we get an interesting insight into the way in which the great noblemen terrorized ordinary litigants. The letter concerned a suit which one Reynold Rouse had brought against William Burgeys for rent alleged to be due. "When Rouse found he could not prevail by right, he maliciously sued the other for trespass in having fished his water, and driven him away by force. He afterwards got him arrested

The need of some court strong enough to deal with malefactors of great power who could flout or over-awe the ordinary courts, was one of the causes that induced the King's Council to sit as a court in the famous Star Chamber, and compelled the extension of the jurisdiction and power of the Court of the Star Chamber, until, in the time of the Stuarts, it was capable of being used as an instrument of tyranny by those stubborn, stupid, and unscrupulous monarchs.[16] Such ill usage of a great and once-honored court brought about its abolition by act of Parliament in 1641[17] and gave it the bad name it has ever since borne. In the statute *Pro Camera Stellata,* passed in 1487 to give a special constitution to this court,[18] we find these recitals:

"The King, our Sovereign Lord, remembereth how by unlawful maintenance, giving of liveries . . . by great riots and unlawful assemblies . . . whereby the laws of the realm in execution may take little effect, to the increase of murders, robberies, perjuries, and unsureties of all men, etc."

From this brief historical survey we draw these obvious conclusions: that the greatest obstacle to the efficient development of English law as a safeguard to the rights of Englishmen was the persistent disregard of law and legal process by individuals and associations that were politically and economically strong enough to make good their own claims to protect what they conceived to be their own interests, to settle their own disputes in their own way without interference by the state, and also without regard to the injury done to the public; that the people looked to the state, in the person of the King, to protect them from such injury; that the king recognized that he was debtor to the people for this protection; that the public interest so injuriously affected by the riots, disorders, corruption, chicanery, and oppression resulting directly or indirectly from the incessant contests between powerful antagonists, or from the organized action of strong associations, was recognized as far transcending the particular interests of the contentious individuals or groups; that the people acting through the king and parliament expressly declared to be unlawful such acts of powerful

for treachery upon an obligation (i. e., a bond). Burgeys complained to Justice Paston, who counselled him not to plead: 'For zyf thu do, he seyd, thu xalte hafe the werse, be thi case never so trewe, for he is feid with my Lord of (N)orthfolke, and mech he is of he (sic) counsel; and also, thu canste no man of lawe in Northfolke ne in Sowthfolke to be with the azens hym; and, for (s) othe no more myth I quan I had a ple azens hym; and therfor myn counsel is, that thu make an end qwat so ever the pay, for he xal elles on do the and brynge the to nowte.'" 1 Gairdner, *The Paston Letters* (1872) 42, No. 28.

[16] 3 Stubbs, *op. cit.* note 7, at p. 555; Winfield, *op. cit.,* 70; Maitland, *Constitutional History* (1908) 262.

[17] St. 16 Car. I, c. 10.

[18] St. 3 Hen. VII c. 1; 2 Stats. of the Realm, 509. An interesting account of the Court of the Star Chamber is found in 1 Cheyney, *History of England* (1914) 90 ff.

men as were proved by experience to be hurtful to the public, and set up a special court to deal with them; that the struggle to make the law supreme lasted three hundred years, weakness in the executive always operating to encourage and strengthen the outlaws; and that finally the people won, and the great men were compelled to submit to the law, and to support their claims of right by weight of reason and justice within the courts rather than by force and intrigue without. And lastly, we are justified in inferring that during all of the long contest the great men and the powerful groups resented as bitterly public interference with their private affairs, and complained as shrilly of the invasion of the rights of the individuals, as do the great men and the powerful groups of our own day.

In one sense the wise man of Israel was quite right in saying there is nothing new under the sun. There are a great many things that look new, but after all they are but the same matter that has always lain in some form under the eye of the sun; only now it is organized a little differently, and set in different relationships to other matter. So in the law we have the same old problems presenting themselves in constantly shifting relationships, and the same old never-ceasing struggle to keep the social machinery so adjusted that it will work under the ever changing social conditions. The great men of the age of chivalry are gone, and with them the great castles with their battlements, the bands of knightly retainers, resplendent in shining armor and with streaming banners, and all the romantic feudal trappings that made them so delightful to read about and so dangerous to live with. But in their places, we, in this age of industry, have our great men and our powerful associations who covet power just as keenly and fight their enemies just as ruthlessly, and with just as little regard for the public interests involved as did the steel-clad barons of old. We may also add that, just as truly as in mediaeval England, the powerful men of our day, whether they be giant corporations, employers' associations, or labor unions, believe their contentions are right, and fundamentally necessary to the welfare of society, and especially of themselves, and just as truly they are incapable, in the bitterness of blinding strife, to be judges in their own causes, to assess the merits of either their own or their antagonists' claims, or to weigh justly the public interest involved. In the place of the great fortified castles and landed estates we have our industrial leaders controlling gigantic plants and immense aggregations of capital, whose annual financial operations would make the total annual revenues of England in Elizabeth's time appear insignificant, and whose employees far outnumber the largest army Elizabeth ever sent into the field. In place of the glittering array of mediaeval retainers, we have single unions, often under the command of a single bold leader, that can muster for an industrial war more men than ever obeyed a British general before the great war. And, like the great feudal barons, these great men of our day often feel their power and are arrogant in its exercise, and protest vigorously

and, if you please, in good faith, against interference with their unrestrained use of it. But will they be allowed to continue to engage in industrial warfare at will, causing very great injury to the public, often directly interfering with and even preventing in large areas the production and distribution of things essential to the life of the community, and constantly threatening riot and disorder on such a scale as might work irreparable damage, or, conceivably, even overturn the civilization that has been builded up through so many centuries with so much heroic effort and patriotic sacrifice? Will such a condition of affairs be tolerated indefinitely, or will our strong men and powerful associations be compelled by the state to bring their disputes before the courts of law there to be adjudicated—not arbitrated—in accordance with previously established rules, and then compelled to abide by the adjudication, as is required of "lesser breeds without the law"? The state, whether federal or constituent, takes the place of the King, each within its jurisdiction, and owes the duty of providing a competent remedy for every injury, whatever be its nature.[19] The state must protect the public against this great wrong unless, perchance, our great men be too strong for the state. In fact, the struggle between the state, acting in the public interest, and the strong men of our day, has been carried on for many years, with varying fortune, but always without any definite plan, or, indeed, any coherent understanding on the part of the public of the issues really involved in the mighty contest.

In making a brief survey of the history of this struggle for law, reason, and right in place of violence, passion, and wrong, it is necessary to note the different positions of the two classes of great men engaged. Those who represent great aggregations of capital, whether as managers of huge corporations, or as officers of associations of employers, are economically very strong, but politically weak, while those representing highly organized and powerful labor unions are economically weak but politically very strong. That which might be expected in a democracy with universal suffrage, has happened. The subjugation of the trusts and great corporations has proceeded much more rapidly than that of the labor unions, which can scarcely be said to have proceeded at all. The Anti-Trust Acts and the varied legislation regulating commerce and the operation of public utilities and other kinds of business affected with a public interest, as enacted by the national Congress and the legislatures of the several states, whether sound economically or not, are so strongly supported politically that the power of those great organizations openly to harm the public is practically destroyed. But the same thing cannot be said of the politically strong labor organizations. As to them it may be said that up to the

[19] This principle is merely restored to its proper place after a too protracted rule of *laissez-faire*. Bracton gives striking expression to it: *"Pertinet enim ad regem ad quamlibet injuriam compescendam remedium competens adhibere."* Bracton, folio 414b.

time of the enactment of the Kansas act creating the court of industrial relations, practically nothing had been done to curb their power to inflict injury upon the public. In fact at the present time it is true that the great labor organizations possess more power to work private wrong and public injury than ever before. In this respect the situation is not unlike that existing throughout the civilized world when feudalism was in such a strong position that it strangled liberty and retarded political progress everywhere except in England, which threw off the incubus only after the long struggle described.

The struggle between the powerful unions and the public interest has taken place in the courts, applying common-law rules, in legislative bodies asked to make new rules strengthening or supplementing the common law, and *in pais* when the State, by the use of its military force, has sought to prevent breach of the peace and destruction of property. The history of this struggle we cannot even trace within the limitations of this article. It must be noted that labor contests before the courts are usually in the form of actions between employers and employees, and conducted under such circumstances that the public interest receives scant consideration by counsel, save where it is brought in to support the contention of a particular litigant. To a less degree proposed legislation is too apt to receive support or opposition in accordance with its expected effect upon the special interests of labor or capital, rather than as it relates to the public good. The formless public has few ardent champions in a legislative body, especially when the public has no clear mind on the question at issue, and speaks with no certain voice.

Theoretically, industrial warfare must be conducted with due regard to established common-law rules, just as international warfare should be conducted in accordance with the rules of international law. Practically, if once the warfare is begun, the rules of law avail little in either case. Proof of particular unlawful acts is apt to be merged and lost in the general din and disorder of the battle; and even if it is not, the remedy is usually wholly inadequate. The real injury to the public is found in the existence of a state of war, with all of its disturbing and disrupting consequences. Individual cases of atrocity in international warfare, or individual instances of violence or intimidation in an industrial war, may be very distressing, but socially they are relatively unimportant. Therefore when the common-law courts punish an individual who in connection with a strike has been guilty of a breach of the peace, or give damages to a person who has suffered because of a secondary boycott or a black list, they rather irritate than deter the combatants. Even when courts of equity issue injunctions against unlawful picketing, or other acts likely to do irreparable injury to the plaintiff's business or property, the benefit to the public is slight so long as the warfare itself, the strike, is lawful, together with its oppressive counterpart, the lockout, and all of the tactical incidents such as peaceful picketing, peaceful persuasion, and primary boycotts which

accompany every strike, and operate to hinder production and distribution, and disorganize business and social conditoins to the great hurt of the public. In short, the recognized common-law rules may mitigate the horrors of industrial war, but they afford no protection to the public against its recurrence.

In this connection it is interesting to note, as showing the great political strength of the labor unions, that when it was discovered that the Sherman Anti-Trust Act, aimed at the strong combinations of capital, would also cover the activities of labor unions and so subject them to actions for damages in federal courts, as determined in the famous Danbury Hatters' Case,[20] as well as to injunctions, the labor leaders were able to induce the Congress to include within the Clayton Act,[21] intended to make the Anti-Trust Act more drastic in its regulation of capitalistic combinations, provisions thought to exempt labor unions altogether from its operation and to limit so narrowly the power of the federal court to grant injunctions in labor disputes as to make them innocuous.

It would seem from the recent decision of the Supreme Court of the United States in *Duplex Printing Press Co. v. Deering*[22] that this special legislation largely failed of its purpose, but the incident is highly significant. It has its parallel in the British legislation following the Taff Vale Case,[23] in which the House of Lords held that a trade union might be sued in its registered name, and the union funds subjected to the payment of a judgment for tort committed by one or more of its members in its behalf. The answer of the British Parliament was the Trade Disputes Act, 1906,[24] which declared that no action in tort could be brought against any union, of either employers or employees, and made inapplicable to labor disputes the common-law rules as to conspiracy and interference with contractual rights.

But even if the common-law rules were allowed to operate in full vigor, it is clear that they are wholly inadequate to cope with this tremendous evil. Legislation that goes to the root of the problem is necessary. Let us briefly note what legislation has been enacted looking to this end.

Most of the American states have statutory provisions for the settlement of labor disputes by mediation, conciliation, and arbitration,[25] and one state, at least, has included such a provision in its constitution.[26]

[20] *Loewe v. Lawlor* (1908) 208 U. S. 274, 28 Sup. Ct. 301; (1915) 235 U. S. 522, 35 Sup. Ct. 170.

[21] 38 Stat. at L. 738, U. S. Comp. St. sec. 1243d.

[22] (1921, U. S.) 41 Sup. Ct. 172.

[23] *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants* [1901, C. A.] 1 K. B. 170.

[24] 6 Edw. VII, c. 47.

[25] Commons and Andrews, *Principles of Labor Legislation* (1916) 136 ff. For example see Conn. Gen. St. 1918, secs. 5332-5337.

[26] Wyoming, Const. Art. 19. This is interesting evidence of the American faith in the inherent virtue and potency of a constitutional provision.

Some of these statutes give to the board erected to carry out the purposes of the legislation, powers of compulsory investigation of industrial disturbances, which is the most striking provision found in the Canadian Industrial Disputes Act, 1907,[27] but there appears to be only one state, Colorado, which adopts the other significant feature of the Canadian Act, viz., the requirement under penalty that in certain designated essential industries no change in terms of employment shall be made without 30 days notice, and that no strike or lockout shall be declared prior to or during a reference of a dispute to arbitration.[28]

The long line of federal statutes enacted to aid in settling industrial disputes, beginning with the Act of 1888,[29] and including the Erdman Act,[30] the Newlands Act,[31] and Title III of the Transportation Act of 1920, setting up the Railroad Labor Board, are all constructed upon the same model as the state statutes already referred to.[32] They are intended to make it a little easier for the parties to industrial disputes to settle their quarrels by agreement before, rather than after, conflict, and to subject either party refusing arbitration to the mild pressure of a possibly adverse public opinion. The state laws have been little used. While it cannot be said that the efforts of the boards created by the several federal acts to bring about settlements by mediation and arbitration have done no good at all, for they have rendered good service, yet it is undeniable that in times of emergency they have proved wholly inadequate.[33] This is best illustrated by the events leading up to the passage of the Adamson Act, in September, 1916. In the early summer of that year the members of the great railway brotherhoods, by a strike vote, authorized their leaders to call a strike if and when they saw fit. These leaders roughly declined all offers of arbitration under

[27] 6 & 7. Edw. VII, c. 20 (Dom.).

[28] Colo. Laws 1915, ch. 180, secs. 29, 30. The right to strike, after hearing or investigation, is expressly declared.

[29] Act of Oct. 1, 1888, 25 Stat. at L. 501.

[30] Act of June 1, 1898, 30 Stat. at L. 424.

[31] Act of July 15, 1913, ch. 6, 38 Stat. at L. 103.

[32] Title III of the Federal Transportation Act, of February 28, 1920, dealing with the settlement of labor disputes between common carriers and their employees, is quite the most vigorous of the federal acts. It confers upon the War Labor Board, created by the Act, powers of compulsory investigation (secs. 310, 311), and the parties to any railway labor dispute who are unable to arrive at a settlement are required to refer the dispute to the Board (sec. 301), and acceptance of the awards of the Board is, by implication at least, enjoined (sec. 313), but in neither case is disobedience penalized in any way. The recommendation made by the President to the Congress in December, 1916, that legislation be enacted to provide for compulsory arbitration, was never acted upon. See Commons and Andrews, *op. cit.* note 25, at p. 143.

[33] Commons and Andrews, *op. cit.*, 136-149. The excellent results obtained in the work of the War Labor Board, established by executive order, were so greatly influenced by the peculiar conditions existing during a time of war, that they are not taken into consideration. War-time precedents cannot safely be relied upon in planning a peace-time program.

the provisions of the Newlands Act, and in true imperial fashion delivered to the Government of the United States an ultimatum, expiring at midnight of September 2, 1916. If their demands were not granted within the time stated, a blockade of the Great Republic would be declared, and rigorously enforced by tieing up all transportation within the continental limits of the United States. Their demands were granted.

The Canadian Industrial Disputes Act, and the Colorado Act of 1915, modeled upon it, and enacted after the disastrous strike in the coal fields of that state, having limited compulsory provisions, appear to have met with a greater degree of success, but even these have proved inadequate.[34] Indeed, we may say that none of the plans for mere voluntary arbitration, even with such gently compulsory features as are found in the Canadian Act, justify any reasonable hope that the way out is to be found along the path of mediation and arbitration. As aids in securing a voluntary settlement by the parties to a labor dispute they are of great value. If the parties went into conference with a knowledge that a compulsory settlement by adjudication would follow a failure to reach agreement, they would be of even greater value. But as remedies for the public wrong caused by strikes, mediation and arbitration they have been tried and found wanting.

On the other side of the world, in New Zealand and Australia, we find more vigorous action on the part of the government, with much more encouraging results. Following earlier unsuccessful experiments with purely voluntary arbitration, and a succession of disastrous strikes in New Zealand and Australia, the newly installed liberal government of New Zealand determined in 1894 to try compulsory arbitration. Submission to arbitration and the resulting awards were made compulsory, however, only upon registered associations of employees and employers. Registration was purely voluntary, and when once made could be cancelled at will. During the turbulent years that have succeeded, the general trend of amendatory legislation has been to tighten and extend the compulsory provisions of the Act, and ultimately to prohibit strikes and lockouts by registered associations; and this prohibition was extended to unregistered associations engaged in certain essential industries. One would scarcely expect success of such a hybrid act, partly voluntary and partly compulsory, but it is said that it has greatly reduced the amount of industrial strife (though the remnant is certainly large) and that all parties are now supporting its compulsory features.[35]

In Australia we find quite the most extended and valuable experiments in compulsory arbitration tending to develop into adjudication. It will be noted that the function of arbitration is to arrive at a compro-

[34] Commons and Andrews, *op. cit.*, 172, 173. See the interesting article on *Labor Legislation in Canada,* by Justice Riddell (1920) 5 MINN. L. REV. 83.

[35] Commons and Andrews, *op. cit.*, 160.

mise, supported so far as possible by considerations of justice and reason, which dangerous antagonists can be induced to accept in preference to the losses and uncertainties of open conflict, while adjudication consists in the determination by an impartial tribunal of issues presented in accordance with established rules. A compromise award is a partial defeat for both of the contestants, and satisfies neither. In fact, it is apt to be determined according to the existing strength of the contestants, while an adjudication is supposed to proceed upon certain fixed principles that take no account of the relative strength of the parties. The contestant who refuses to abide by the award of arbitrators merely breaks his contract and sets his judgment against that of the arbitrators, while the party who refuses to submit to a judgment of a court is defying the state.

Passing over the Victoria Act of 1896 establishing a minimum wage board, which is said to have worked quite successfully, and the New South Wales Compulsory Arbitration Act, of 1901, which seems to have been of little benefit in that strike-ridden state, we will consider briefly the Commonwealth Conciliation and Arbitration Act of 1904.[36] This Act, passed in pursuance of authority expressly given by the federal Constitution, necessarily applies only to disputes extending to more than one state. The court created by the Act consists of one judge, called the President, who is appointed from the members of the High Court of Australia, which is the title of the supreme court of the Commonwealth. Despite its title, "The Court of Conciliation "and Arbitration," this court is far different from the flabby arbitration boards erected under most laws bearing similar titles. It is a court of record, with all the powers of such a court. It can summon parties and witnesses, issue interlocutory orders, enter final judgments and decrees, and punish for contempt. Its judgments are enforceable by execution, which may be levied upon the funds or other property of a judgment debtor union or association. It may impose fines and other penalties.[37] Its jurisdiction is confined to industrial disputes between registered organizations of employers or employees, but any organization that does not voluntarily register may be brought within the jurisdiction of the court by proclamation of the Governor General.

The Act absolutely prohibits strikes and lockouts, subject to severe penalties. It not only recognizes unions as well as collective bargaining, but also gives the court authority in effect to compel any employer to adopt the closed shop, although this power has not been exercised. In fact, the whole theory of the Act rests upon assumed unionization.

[36] Three interesting and illuminating articles by Henry B. Higgins, *A New Province for Law and Order,* discussing this Act, and the work of the court established by it, are found in (1915) 29 HARV. L. REV. 13, (1918) 32 *id.* 189; and (1920) 34 *id.* 105.

[37] The High Court of Australia has recently held the provision giving the court this power to be unconstitutional and void. *Waterside Workers v. Alexander* (1918, Aus.) 25 C. L. R. 434.

Only a union or other registered organization may institute a proceeding in the court, though the court may be moved to action by the certificate of the Registrar, an officer provided by the Act, or by any state industrial authority.

It is scarcely necessary to add that this court has been the political storm center of the Commonwealth, in which the Labor Party is now in control of the Government. Here too, it has been true that the power of the court to deal with the difficult industrial situations that have arisen, particularly under the stress of war, has varied with the strength or weakness of the executive.[38] In a few instances the court has failed signally to control situations charged with passion and danger, but it has been strikingly successful in most of the cases that have come before it, reports of which fill several substantial volumes. There have not been wanting announcements that the court has proved a failure, and that it only furnishes additional evidence that the "composing of "industrial differences is the business only of the two parties to the "dispute," and that England's policy to "allow both sides a free hand "for a fair fight" is sound.[39] But Justice Higgins, a man of ability, sound judgment, and force, in a luminous statement of the work of the court, of which he has been President since 1907, seems to prove that, having due regard to the difficult circumstances under which the court has worked, it has been highly successful, and now has the support of a very great majority of both unions and employers.[40] In any event, the lawyer is interested to see that with the succeeding decisions of this court there is being steadily built a body of established rules to govern the decision of questions that arise in labor disputes, questions which in our own country are at best settled by the spurious method of unstable compromise, and at worst by strikes, picketing, violence, and riot, contrary to the peace and dignity of the state. Justice Higgins formulates no fewer than 33 principles of labor law which he claims have been determined for Australia by the decisions of his court.[41]

But it has been reserved for our state of Kansas to make the latest, boldest, and most interesting experiment in the adjudication of labor disputes. The dramatic circumstances that goaded the people of Kansas to enact the Court of Industrial Relations Act in January, 1920, have already been mentioned.[42] Under this act the Court of Industrial Relations, consisting of three judges, has in most respects more sweeping powers and broader jurisdiction than the Australian court. It takes cognizance of every kind of industrial dispute without reference to unionization, provided it arises in one of the industries declared by the Act to be affected with a public interest. The court may be moved

[38] Higgins, *op. cit.*, 34 HARV. L. REV. 105, 133, 134.

[39] Commons and Andrews, *op. cit.*, 124, 135.

[40] Higgins, *op. cit.*, 29 HARV. L. REV. 13, 37; 34 HARV. L. REV. 105, 111.

[41] Higgins, *op. cit.*, 29 HARV. L. REV. 16-22.

[42] These circumstances are set forth and the provisions of the Act summarized in an article by J. S. Young, in (1920) 4 MINN. L. REV. 483.

to action not only by either party to a dispute, but upon the complaint of any ten tax-payers of the community in which the threatened controversy exists, or upon complaint of the attorney general of the state. Exercising all the powers of the former Public Utilities Commission, merged in this court, it may of its own motion investigate conditions existing in the essential industries which threaten to endanger the public peace, the continuity of operation of such industries, or the production or transportation of the necessaries of life, and make such orders as may be deemed necessary to preserve the peace and protect the public. It differs from the Australian court, however, in that it has no power to compel the attendance of parties or witnesses, which it must secure by appeal to any court of competent jurisdiction; and it can enforce obedience to its orders and awards only by bringing proceedings for that purpose in the Supreme Court of the state. Any party aggrieved by such order or award is given the right within ten days thereafter to appeal to the Supreme Court. In case of unlawful suspension of any of the industries or public utilities designated by the Act as essential, under circumstances such as to threaten the public peace or endanger the public health, the court is empowered to institute proper proceedings to take over, control and operate such industry or utility.

The Act expressly recognizes the legality of unions, the right of collective bargaining, and the right of any employee to leave his employment at will, but makes illegal and subject to severe penalties all strikes and lockouts, the incitement of others to strike, all picketing, and all intimidation in connection with or inducement of such strikes.[43] The violation of any of the provisions of the Act, or of any valid order of the court, is made a misdemeanor punishable by fine, while the act of any officer of a corporation, or of a labor union, making use of his official position to induce or influence others to violate the provisions of the Act or orders of the court, is made a felony, punishable by fine or imprisonment or by both. There are many other provisions intended to assure to the court ample powers to make it able to meet any emergency that may arise, and also to assure to any person that may be affected by any act of the court an opportunity to test its validity by regular proceedings in a state court.

As already stated, the Act was passed against the vigorous and unanimous protests of the representatives of both employers and employees. It was unsparingly condemned in the report of the Executive Committee of the American Federation of Labor to the annual convention held at Montreal last July,[44] and has been bitterly denounced by Samuel Gompers and other labor leaders as a tyrannical attempt to

[43] "Where legislation is passed making a strike or lockout a criminal offense, statutory enactment should be regarded, not so much as a subversion of Common Law principles relating to the liberty of the subject, but as an expansion or adaptation of them to modern conditions." W. Jethro Brown, *Statutory Prohibition of Strikes* (1920) 36 LAW. QUAR. REV. 378, 393.

[44] (July, 1920) 27 AMERICAN FEDERATIONIST, 627.

rob the unions of their only weapon of offense, the strike.[45] Immediately after the passage of the Act, Alexander Howat, president of the local union of the United Mine Workers of America, then still on strike, publicly announced that he would not obey the law, and when summoned to appear before the Court of Industrial Relations to testify concerning conditions in the coal fields, he defiantly refused. Disobeying an order obtained from one of the state courts, he was duly committed for contempt. On appeal the Supreme Court held the Act valid and affirmed the order of the district court.[46] Pending an appeal to the Supreme Court of the United States, he was released on bail.

A careful examination of the arguments made by labor leaders against this Act shows that they all rest upon a fear that the court will be controlled by the employers and therefore hostile to union claims. There is nothing in the record of the first year of the court's activity to justify such a fear. A report on December 3, 1920, by the presiding judge, W. L. Huggins, shows that all of the 24 cases filed on the industrial side of the court were instituted by employees, and not one by the employers, and that of the seventeen cases decided, wage increases were granted in 13 and denied in two only. The one appeal taken to the Supreme Court was by the employers. This brief record would seem already to confirm the expectation that the great political strength of labor will effectually protect employees from all danger that the employers will control the court. It is also consistent with the fact that compulsory arbitration is retained in Australia under a labor government.

Neither have the employers any reason to fear that the court will run amuck, despite the misleading and inaccurate reports appearing in many newspapers, particularly of the decision in the so-called Topeka Millers Case, handed down on Dec. 20, 1920. In fact the Act specifically balances its declaration that it is "necessary for the promotion "of the general welfare that the workers engaged in any of said "industries . . . shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor," by a similar assertion "that capital invested therein shall receive at all times a fair "return to the owners thereof."[47] The Topeka Millers Case was a proceeding begun on the court's own motion upon information that the flouring mills were reducing production for the alleged purpose of raising the price of flour by decreasing the supply, contrary to the provisions of the Act. Upon citation the managers of the several milling companies of the city appeared before the court and produced their books and other evidence tending to show their reasons for reducing production. The court found that

[45] See Editorial of Samuel Gompers (Nov. 1920) *27 id.* 1011.
[46] *State v. Howat* (1920) 107 Kans. 423, 191 Pac. 585.
[47] Sec. 9.

"the elevators in most instances are full of wheat waiting to be milled; that the flour storage capacity of the mills is practically full; that the price of flour is falling and is now considerably below what it was three months earlier; that the grocery stores have no trouble in getting full shipments of all flour orders; that the mills are readily accepting all orders they can get at current prices, and promptly shipping out the same; and that there is no shortage anywhere in the state."

Upon such findings of fact the court concluded that there was no reason to think that production had been curtailed to raise prices, or that the milling industry of the state was not being conducted with that "reasonable continuity" required by the law. With the approval of all of the millers before the court save one, the court at the conclusion of the hearing appointed a committee, upon which the millers were represented, to draw up rules to be prescribed by the court, pursuant to the provisions of the Act, for the regulation of the milling industry with reference to wages and continuity of production.

The impatient business man will be disposed to say that this was an unwarranted interference with the business of these millers, resulting only in annoyance to the respondents and loss of time and labor to all concerned. This somewhat natural feeling of irritation is probably responsible for the press reports, which distorted the language of the court approving the action of the millers in continuing to pay their skilled employees at a monthly rate, whether the mills were running or idle, into a judicial declaration that employees must be paid even though the employers' works are shut down. It may be suggested, however, that the proceeding may have accomplished other things than the annoyance of the respondents. It is not unlikely that this public finding by an impartial tribunal, after a thorough investigation, that charges made that these millers, like other employers, were cutting down production in pursuance of a fraudulent scheme to force wages down and prices up, were untrue, may be worth far more in industrial peace, the stilling of unrest, and ultimate business prosperity, than it cost in time and patience. It is always annoying to be haled into court on any account, but the liability to such a summons is a part of the price civilized man pays for his freedom from violence and fear.

Other decisions of the court are interesting as disclosing certain embryonic rules of "labor law" taking shape. These may be best exhibited by noting the findings and orders of the court in the Joplin & Pittsburg Railroad Case.[48] The complaint was filed by the officers and members of a local union of the Amalgamated Association of Street and Electric Railway Employees of America, against the Joplin and Pittsburg Railway Co., a corporation operating a system of interurban electric railways in southeastern Kansas. The complaint alleged in substance that the wages paid to the complainants by the respondents were unreasonably low and insufficient to provide reasonable living

[48] *Davidson v. Joplin & Pittsburg Ry.* (April 23, 1920) Docket No. 3283.

conditions; that the complainants had made diligent effort to secure a settlement of the controversy about such wages with the respondent without success, and that the continuance of the controversy endangered the orderly operation and efficiency of the respondent's service to the public, and likewise endangered "the public peace, the public health "and general welfare of a large section of the state of Kansas." The prayer was that the court should take jurisdiction of the controversy, make and establish a reasonble wage, and grant such other relief as might be just and proper.

The respondent's answer (1) denied the jurisdiction of the court, since its business was interstate; (2) denied the existence of the dangerous controversy alleged; (3) set up a wage contract with the complainants for a period not yet expired; and (4) alleged that respondent's earnings were not sufficient to enable it to pay higher wages. The three first issues raised by the answer of the respondent were decided adversely, for reasons with which we need not here concern ourselves. The fourth issue, however, that the respondent's earnings did not enable it to increase wages, brought the court face to face with an exceedingly difficult question. The Act declares the employee entitled to a fair wage and the employer to a fair return upon his capital investment. What if the revenues of the business are not sufficient to afford both? Shall the claim to a fair wage or that to a fair capital return have priority? The court, after stating the hope that the increase in rates recently allowed the respondent would provide the needed revenues, met the issue squarely by declaring that "wages to labor "should be considered before dividends to the investor, and that a "business which is unable to pay a fair wage to its employees will "eventually have to liquidate."[49]

In determining what was a "fair" wage, the court reaffirmed the definition given in the preceding Topeka Edison Co. Case:[50]

"Such persons [faithful and skilled workers] are entitled to a wage which will enable them to procure for themselves and their families all the necessaries and a reasonable share of the comforts of life. They are entitled to a wage which will enable them by industry and economy not only to supply themselves with opportunities for intellectual advancement and reasonable recreation, but also to enable the parents working together to furnish to the children ample opportunities for intellectual and moral advancement, for education, and for an equal opportunity in the race of life. A fair wage will also allow the frugal man to provide reasonably for sickness and old age."

One doubts the practical value of this definition when he notes the unusually large number of terms of uncertain meaning that are used. Its lack of certainty became quickly apparent when in the Wendele

[49] This declaration was reaffirmed in the second Joplin and Pittsburg Railway Case (Dec. 9, 1920) Docket No. 3653.

[50] *State v. Topeka Edison Co.* (Mar. 29, 1920) Docket No. 3254, 1-2.

Case,[51] decided June 15, 1920, it became necessary to determine a fair wage for a body of employees most of whom were unskilled. For this purpose the court accepted as its guiding principle the rule laid down in the Topeka Edison Co. Case, merely substituting the more indefinite word "they" for "such persons," which limited the rule as previously announced to "faithful and skilled workers." In further analyzing the elements that go to make up a "fair wage," the court adopts the statement of relevant circumstances given in the federal Transportation Act of 1920:[52]

> "(1) The scales of wages paid for similar kinds of work in other industries;
> (2) The relation between wages and the cost of living;
> (3) The hazards of the employment;
> (4) The training and skill required;
> (5) The degree of responsibility;
> (6) The character and regularity of the employment;
> (7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments."

To these the court added an eighth, "in view of the almost universal "complaint as to inefficiency and lower production in all lines of "industry;"

> "(8) The skill, industry, and fidelity of the individual employee."

It is probable that this added circumstance will prove to be irrelevant in dealing with groups of employees, and that the efficiency of the individual in any class of employees must be determined and acted upon by the employer. It is quite true that this embryonic rule for determining a "fair wage" affords no guidance in solving many problems that must arise, as, for example, whether a fair wage for women, who usually do not maintain families, should be equal to that of men, who usually do; or whether single men are entitled to wages equal to those of married men; or whether local variations in standards and expense of living are to be considered. But even if it develops that the rule as stated is of little or no value, the fact that it has been declared in one case and accepted in three later cases as stating the principles guiding the Court's action, is most significant. The process of building law where now is only the wilderness of passionate contention, has begun.

The new body of law that in Kansas and Australia is beginning to assume a vague form will be strange and repellant to English and American lawyers for generations accustomed to issues that can be framed according to Chitty's Pleadings, and it will be bitterly resented for a time by all, and always by the ignorant and narrow, employers and employees. But the social, economic, and industrial world has been made over again by steam and electricity, the penny post and the

[51] *Wendele v. Union Pacific Ry.* (June 15, 1920) Docket No. 3293.
[52] Act of Feb. 28, 1920, sec. 307.

penny press, the state educational system, unrestricted suffrage and the soap box, and labor unions and employers' associations. Our Anglo-American system of law must also be made over again. It has already changed much. It has annexed large new territories governed by the workman's compensation acts, it has seen the theory of the police power grow almost beyond recognition, and is now receiving large increments from the findings and adjudications of those newly devised courts which the exigencies of our constitutional law require us to call administrative commissions. It must now open up still further to receive a new body of rules and new forms of procedure, which will probably be called "labor law." When such a body of law, with the resulting attitude of mind on the part of the employers, employees, and the contestants, shall prevail, the endless arguments that now disrupt thousands of conferences each year, concerning a fair wage, a fair day, fair treatment, fair working conditions, and the innumerable other points of controversy, will be transferred to the legislature and the court, and subjected to the determinative procedure there obtaining and to the natural and healthy reactions of public opinion that are always incident to open discussion. There will still be conferences, mediation, arbitration, and settlements by other means, which will be far more effective than under present lawless conditions, for at every conference each party will be able to predict with some degree of certainty what will happen to his contention if the other hales him into court. The plan affords to both employer and employee a prospect of fair rules, a fair hearing, and a fair determination of wasteful disputes, and to the public a remedy for an intolerable wrong.

Eminent writers seem to agree with the labor critics of the Kansas Act that in depriving the unions of the power to strike, the law also deprives them of the power of collective bargaining.[53] But manifestly such is not the case where another remedy, less costly to the economically weak unions, and more expeditious and certain, is given in place of the strike. The representatives of the union can support their just demands in bargaining by threatening an appeal to the courts, a threat which they can make good without the tragic suffering through loss of wages, and without the insensate injury to the innocent public, that inevitably accompany a strike. So far from being an injury to the employees, the Kansas Act, if it is wisely administered by a court of sense and vision, and supported by a strong executive, will prove an inestimable blessing to them. A man with an unliquidated claim against his neighbor and an intelligence of the cave-man grade, will very sincerely believe that the most effective way to secure a satisfactory settlement is to approach his neighbor with a club, prepared to beat him to death if he does not comply with his demands. But a more intelligent claimant would perceive the possibility of violent resistance by the neighbor, and the drawing of others into the fray with

[53] Commons and Andrews, *op. cit.* note 25, at p. 150.

serious consequences to himself; and he might anticipate that even in the event of his success in the conflict, a dead or seriously wounded debtor would scarcely be able to pay after all. With only a little prevision he would perceive that it would be far wiser to call upon the irresistible power of the community, the majesty of the law, to compel his debtor to pay what the community adjudged to be due. The strike is a cave-man remedy, and has no proper place in the twentieth century. Where access to a competent court of industrial relations exists, "the pursuit of social betterment by direct action substi-"tutes force for law, violence for right, coercion for education by "persuasion and enlightenment, sectional domination for the self-"government of the community."[54] Private warfare for whatever cause is a public wrong. A clear public policy loudly demands that the strong as well as the weak shall submit their quarrels to the peaceful and orderly determination of established tribunals. The Kansas experiment is not yet a demonstration,[55] and the Kansas plan must encounter many difficulties that lie deep in the very nature of a democracy, not to mention those incident to our scheme of constitutional law, but it is fundamentally right and will prevail. The struggle will be hard and long, but not so hard or so long as that which brought the great barons of England to submit to the law of the land and to the King's courts.

[54] W. Jethro Brown, *op. cit.*, 36 LAW. QUAR. REV. 393.

[55] Mr. Gompers, writing in the AMERICAN FEDERATIONIST for November, 1920, at p. 1011, says: "It [the Kansas Act] is a law calculated to produce what its proponents call industrial 'peace,' yet there has been no more bitter industrial warfare in the United States than there has been in the coal fields of Kansas since this law was enacted." But in a letter dated Jan. 3, 1921, the presiding judge of the court writes: "Mr. Howat and 170 other labor officials, principally officers of local unions, have been enjoined under the Kansas Law from calling a strike, with the admonition from the District Judge that it might be necessary to issue a mandatory injunction requiring these leaders to call the men back to work. We have had no strike in the coal mining region worthy of the name since the law went into effect. There have been some cessations of work because of small differences between the employers and employees, some of which have been settled by this Court by informal orders. The production of coal is considerably higher than it was last year and taking it altogether I feel that the law so far has proved as successful as could have been expected under the conditions."

As this article goes to press, the newspapers report that Mr. Howat and the other enjoined leaders of the coal miners' union have called a strike in defiance of the injunction, with the deliberate intent of putting to the test the power of the state to forbid strikes. If his report is correct, it would seem to indicate that the turbulent great men of our day are as unwisely over-confident as those in the time of Henry VII.